

<b>COMPLIANCE BOARD OPINION NO. 01-9</b>
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May 30, 2001

*Mr. Kye E. Parsons*

The Open Meetings Compliance Board has considered your complaint that the Salisbury City Council violated the Open Meetings Act at a meeting on April 19, 2001. The complaint alleges that the City Council effectively prevented many members of the public from observing the meeting by conducting it in a room too small to accommodate those in attendance, when a larger space was readily available. For the reasons stated below, the Compliance Board finds that the Act was not violated.

**I**

**Complaint and Response**

Your complaint alleges that a quorum of the Salisbury City Council met in a “public work session” beginning at 5:30 p.m. on April 19, 2001. The meeting was held in Room 302, a conference room in the City/County Office Building in downtown Salisbury. The complaint states that, “due a particular public interest in this meeting, a large group of approximately 100 ... citizens took time out of their schedules to attend. Unfortunately, the conference room’s small size only allowed a very small fraction of these people to fit in there. Even then, there was standing room only. Consequently, a large group of citizens were forced to stand outside the room with several dozen people spilling out into the third floor hallway, without absolutely no way to see or hear any of the council’s proceedings.”

The complaint goes on to assert that the Council Chambers, a much larger room on the same floor, was available during the time of the work session: “[D]uring the whole time, the adjacent council chambers was completely empty and no other meetings were being held there at that time.... It concerns me as to why the City Council refused to relocate its meeting to the council chambers since it was certainly available for occupancy.”

In a timely response on behalf of the City Council, Paul D. Wilber, Esquire, confirms that the City Council did meet in Room 302 at 5:30 p.m. on April 19. This work session was part of a cycle of bimonthly work sessions that are routinely held in Room 302. Notice of the meeting was posted and distributed to the news media in a timely fashion.

When the work session started at 5:30 p.m., a protest involving approximately 200 individuals was occurring simultaneously outside of the building. The protest, we understand from Mr. Wilber's response, had to do with a Council decision three days earlier to remove the incumbent president in favor of another member of the Council. When the work session began, "approximately 11 individuals were seated in public attendance in Room 302 ...." About an hour later, "a contingent of approximately 100 individuals who participated in the protest outside the City/County Government Building, entered, or attempted to enter Room 302.... These individuals entered the room in an orderly fashion and did not disrupt the Work Session. These individuals filled all of the seats in the room, and then stood and lined the remaining wall space, and then filled the entrance hall and overflowed into a larger hall area." Mr. Wilber observes that, "At no point did a member of the Council or the public request that the meeting be moved to a larger room."

With respect to the availability of the Council Chambers, the response states as follows: "On April 19, 2001, those Chambers were booked by the Planning Commission and an Advisory Committee meeting from 1:00 p.m. until 10:00 p.m. Brenda Colgrove, the City Clerk, has subsequently determined that the Advisory Committee meeting was cancelled, but she cannot determine at what time on April 19 ... the meeting was cancelled." Mr. Wilber contends that, "Until the evening of April 19, 2001, Room 302 was of sufficient size to accommodate members of the public and press for Work Sessions.... No member of the public, press, or City Council requested that the Work Session be moved to a larger room. Scheduling a larger room requires advanced coordination by the City. Room 302 was of sufficient size to accommodate the press and public for approximately one-half (½) of the meeting time."

## **II**

### **Analysis**

#### ***A. Selection of Site Prior to Meeting***

In §10-501(c) of the State Government Article, the General Assembly has declared it to be the public policy of the State that open meetings "shall be held in places reasonably accessible to individuals who would like to attend these

meetings.” Apart from this declaration, the Open Meetings Act does not contain requirements or criteria about the size of a meeting room.

In his explanation of the Act, the Attorney General has pointed out that, “When a public body is considering where to meet, it should choose a room large enough to accommodate those members of the public and press who are expected to attend.” *Office of the Maryland Attorney General, Open Meetings Act Manual* 18-19 (4<sup>th</sup> ed. 2000). We consider this to be a requirement implicit in the Act’s general mandate for open meetings. That is, a public body would violate the Act if it had reason to expect a large crowd but nevertheless deliberately chose to meet in too small a space when a suitable, larger space was available.

There is no evidence, however, that the Salisbury City Council acted unreasonably in choosing Room 302 as the site for its regularly scheduled work sessions. Judging from Mr. Wilber’s response, there had never been any prior problem of insufficient space in that room. Moreover, evidently nothing on the agenda of the work session was expected to, or did in fact, attract an unusually large crowd. Only about eleven observers attended the first part of the work session. The arrival of a large number of citizens, far in excess of the room’s capacity, was occasioned by the end of a protest unrelated to items on the agenda of the work session.

***B. Moving a Meeting to a New Site***

When a large crowd did arrive unexpectedly, their very presence raised a separate issue: Should the City Council have moved the meeting to a larger room, as your complaint proposes, and did it violate the Act by not doing so?

In the absence of any language in the Act addressing this issue, the Attorney General has observed that a decision of this kind is discretionary, not governed by the Act: “Should a larger crowd than expected attend [a meeting], the [public body] may move to a larger facility if one is readily available or postpone the meeting until a larger space can be found. These are matters of discretion, however, not imposed by the Act.” *Open Meetings Act Manual* at 19.

We agree that the Act does not address the issue of a location change based on an unexpectedly large turnout. The omission of such a provision presumably reflects the General Assembly’s judgment that, in many circumstances, moving a meeting in mid-course would be too disruptive. Therefore, we hold that the Salisbury City Council did not violate the Act by maintaining its April 19 meeting in Room 302.

As the Attorney General also pointed out, however, a public body does have discretion to move a meeting, and we deem it appropriate to provide guidance about the exercise of this discretion. In our opinion, a public body, although not legally required to do so, *should* move a meeting to a larger room if the current meeting site cannot accommodate all who have arrived, a larger room is readily available, a request is made that the meeting be moved there, and moving the meeting would not interfere with the public body's ability to conduct its business. To move a meeting under these circumstances would advance the underlying goals of the Open Meetings Act without unduly burdening the public body. If a public body moves the meeting site, it should post a notice to that effect at the original location, so that late-comers will be directed to the proper place.

### **III**

#### **Conclusion**

The Salisbury City Council did not exclude members of the public from its meeting by deliberately scheduling the April 19 work session in a meeting room known to be too small to accommodate the expected number of observers, and the Act did not require that it move the meeting once an unexpectedly large crowd arrived. Therefore, we find no violation of the Act.

OPEN MEETINGS COMPLIANCE BOARD

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